

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

REGINALD L. DUNAHUE, ADC #106911

PLAINTIFF

v.

NO. 5:14CV00331 JLH/BD

RAY HOBBS, *et al.*

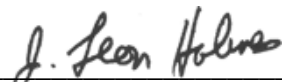
DEFENDANTS

ORDER

The defendants moved to dismiss Reginald Dunahue's complaint on the ground that Dunahue has three strikes under 28 U.S.C. § 1915(g) and therefore cannot proceed *in forma pauperis*. United States Magistrate Judge Beth Deere submitted a partial recommended disposition in which she recommended that the Court deny the motion to dismiss because two of Dunahue's prior dismissals should not count as strikes. Defendants have objected to the Judge Deere's recommendation with respect to one of the prior dismissals but not to the other. In other words, the defendants concede that Dunahue does not have three strikes. Instead, according to them, he has two strikes.

Because the defendants concede that Dunahue does not have three strikes, the motion to dismiss is DENIED, without reaching the issue of whether Dunahue currently has one strike or two strikes. It is unnecessary to decide the issue of whether Dunahue has one strike or two, so that issue will be left to be decided on another occasion if and when Dunahue seeks to proceed *in forma pauperis* and the issue arises as to whether he has three strikes. The partial recommended disposition is therefore adopted in part. Document #39. The Court does not adopt Judge Deere's recommendation that *Dunahue v. Smallwood*, E.D. Ark. Case No. 5:07CV00136, be counted as a strike, leaving that issue to be decided if and when it would be dispositive of the case.

IT IS SO ORDERED this 3rd day of March, 2015.


UNITED STATES DISTRICT JUDGE